IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1192/2006
(Oma Ram & Ors. Vs. State of Rajasthan & Anr.)

Date of Order : 22nd November, 2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. B.S.Rathore for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. C.R.Jakhar for the non-petitioner No. 2.

BY THE COURT:-

Reportable

This criminal misc. petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code' hereinafter) is directed against the order dated 05.09.2006 passed by Additional Sessions Judge No.3, Jodhpur (for short 'the revisional court' hereinafter), whereby the revision petition filed by the petitioners against the order dated 08.8.2006 passed by Sub-Divisional Magistrate, Osian (for short 'the Executive Magistrate' hereinafter), was dismissed.

I have heard learned counsel for the parties. Carefully gone through the order passed by the Executive Magistrate as well as the order passed by the revisional court.

The facts and circumstances giving rise to the instant

criminal misc. petition are that the Station House Officer, Police Station, Osian filed a complaint dated 01.8.2006 under Section 145 and 146 of the Code before the Executive Magistrate alleging therein that a complaint filed by non-petitioner No.2 herein under Section 145, 146 of the Code was received by him for inquiry alleging therein that the agriculture land bearing Khasra No. 62 measuring 50 bighas and 8 biswas is recorded in the Khatedari of complainant and the petitioners. It was alleged that the brothers of the complainant non-petitioner No.2 namely Nainaram and Tulchharam sold the land of their share to the petitioners herein and therefore, on the basis of which the petitioners intended to dispossess the complainant non-petitioner No.2 for which there is likelihood of breach of peace. An inquiry was conducted by the police and from the inquiry report, the Executive Magistrate noticed that there is likelihood of breach of peace relating to the possession of the land. The SHO in his report stated that out of the 50 bighas and 8 biswas of land of Khasra No.62, Gokulram who was having ½ share had already sold his share to the petitioners long back. Originally the land was owned and recorded in the Khatedari of Gokulram and Bannaram both brothers having ½- ½ shares. Gokulram had already sold his land to the petitioners long back. On the death of Bannaram, ½ share of the land was recorded in the name of Nainaram, Tulchharam and non-petitioner No.2 Sonaram. Thus

for the ½ share, there are three sharers namely Nainaram, Tulchharam and Sonaram. Nainaram and Tulchharam each of them having 1/3 share sold their 1/3 share of land to the present petitioners by a registered sale deed and since then the petitioners are in possession of the land and they have cultivated the land having the crops of groundnut. However, with regard to the boundaries, the parties have dispute and therefore, likely to commit breach of peace. The Executive Magistrate drawn the preliminary order under Sub-section (1) of Section 145 of the Code. An affidavit was filed by the concerned SHO stating therein that the petitioners and the non-petitioner No.2 are in possession of the land in their respective shares and cultivating the same, however, there is dispute between the parties with regard to the partition of the land, therefore, requested to attach the land in question. On the basis of the affidavit as noticed above, the Executive Magistrate attached the land and appointed Tehsildar as receiver. That order came to be challenged by the petitioners before the revisional court. However, the revisional court did not interfere with the order of the Executive Magistrate. Hence this criminal misc. petition.

It is contended by learned counsel for the petitioner that Executive Magistrate as well as the revisional court fell in error in passing the orders impugned as there was no emergent

situation warranting attachment of the land in dispute. The material made available before the Executive Magistrate does not disclose the emergent situation warranting attachment and therefore, the Executive Magistrate has misread the affidavit filed by the SHO. It was further contended that as per the report of the police and the order of the Executive Magistrate, it is more than clear that the petitioners and the non-petitioner NO.2 are in possession of their respective shares of land in dispute and have cultivated the same. That shows that the land which fall in the share of the present petitioners is in possession of the petitioners and it is the petitioners who cultivated the same and from the record it is more than clear that the land has been cultivated by the petitioners having the crops of groundnut. According to learned counsel for the petitioners, even it is not the case of the non-petitioner No.2 that he is in possession of the land for which dispute has been raised. He himself in his complaint, categorically stated that his brothers Tulchha Ram and Nainaram sold their shares to the present petitioners and at best the dispute if any raised by the complainant non-petitioner No.2, is that the petitioners are in possession of the land more than their share, for which a revenue suit has already been filed by the non-petitioner No.2 before the Executive Magistrate and is pending between the parties. In para 1 of the complaint, the non-petitioner No.2 clearly stated that he and present petitioners

are in cultivatory possession of their respective shares. In para 2 of the complaint also, it has specifically been stated that the parties are in cultivatory possession of their respective shares. Therefore, learned counsel for the petitioners submits that there being no dispute with regard to the possession of the land, even as per the version of the non-petitioner No.2 in his complaint, and therefore, the Executive Magistrate fell in error in initiating the proceeding under Section 145 as also under Section 146 of the Code. Learned counsel for the petitioners further submits that there is no material on record showing emergent situation. The affidavit filed by the SHO does not disclose so, whereas the Executive Magistrate stated that the concerned SHO has filed an affidavit showing the emergent situation. Thus, the order of the Executive Magistrate suffers from misreading of the material on record. Lastly, it was submitted by learned counsel for the petitioners that the revenue suit is pending between the parties with regard to the land in dispute and order of injunction has been passed and therefore, permitting the Executive Magistrate for parallel proceeding under Section 145 and 146 of the Code is nothing but an abuse of the process of the Court. Learned counsel has relied on decision of Hon'ble Supreme Court in Ram Sumer Puri Mahant Vs. State of U.P. (1985) 1 SCC 427, in Amresh Tiwari Vs. Lalta Prasad Dubey and Another 2000 SCC (Cri) 806 and a three Judge Bench decision of Hon'ble Supreme

Court in Mahar Jahan and Others Vs. State of Delhi and Others (2006) 1 SCC (Cri) 320.

Learned counsel appearing for the non-petitioner No.2 submits that though the parties are in possession of their respective shares but the partition has not taken place according to law and unless the land is partitioned in accordance with law, the petitioners have no right to possess the land. Learned counsel for the non-petitioner No.2 has relied on decision of Hon'ble Supreme Court in Prakash Chand Sachdeva Vs. The State and another AIR 1994 SC 1436 and two decisions of this Court in Smt. Prabhati Devi Vs. State of Rajasthan and Ors. RLW 1996 (2) (Raj.) 249 and in Mahaveer Prasad Vs. State of Rajasthan and Ors. 1990 Cr.L.R. (Raj.) 759.

I have given my thoughtful consideration to the rival submissions made by learned counsel for the parties. Carefully perused the record of the Executive Magistrate as also the revenue suit filed by non-petitioner No.2 against the petitioners and others which is pending in the Revenue Court between the parties.

The non-petitioner No.2 filed a revenue suit under Section 88, 188 and 53 of the Rajasthan Tenancy Act against the present petitioners and their predecessors in title on 12.6.2006 before the Assistant Collector, Osian. Along with the application, an application for temporary injunction under Section 212 of the

Rajasthan Tenancy Act was filed. By order dated 12.6.2006, the Assistant Collector, Osian restrained the present petitioners who were the non-petitioners therein, from interfering in the possession of the non-petitioner No.2 in 4/15th share of the land in Khasra No.62 measuring 50 bighas and 8 biswas and it was made clear in the order of injunction that the non-petitioner No.2 shall not be dispossessed from his share of land and parties to maintain the status-quo with regard to their respective possession.

Sub-Section (1) of Section 146 of the Code provides that if the Magistrate at any time after making the order under sub-section (1) of Sec.145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as if referred to in Sec.145 or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject in dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof.

In Ram Sumer Puri Mahant Vs. State of U.P. (supra) Hon'ble Supreme Court held as under :-

> "when a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the

> Code. There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceedings should not be permitted to continue and in the event of a decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue..”

In Amresh Tiwari Vs. Lalta Prasad Dubey and Another (supra), Hon'ble Supreme Court held that it is only in cases where a civil suit is filed for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil court would be binding on the Magistrate.

In Mahar Jahan and Others Vs. State of Delhi and Others (supra) Hon'ble Supreme Court held that the house property, which is the subject-matter of these criminal

proceedings is also the subject-matter of the civil suit pending in the civil court. The question as to possession over the property or entitlement to possession would be determined by the civil court. The criminal proceedings have remained pending for about a decade. There is no propriety behind allowing these proceedings to continue in view of the parties having already approached the civil court. Whichever way proceedings under Section 145 Cr.P.C. may terminate, the order of the criminal court would always be subject to decision by the civil court. Inasmuch as the parties are already before the civil court, it is proper to let the civil suit be decided and therein appropriate interim order be passed taking care of the grievances of the parties by making such arrangement as may remain in operation during the hearing of the civil suit. On these premises, the proceedings initiated under Section 145 of the Code have been quashed leaving the civil court at the liberty to grant interim relief without regard to the fact whether the application for that purpose is moved by the plaintiffs or the defendant.

This Court in Tulchha Ram Vs. State of Rajasthan and Ors., S.B.Criminal Misc. Petition No.1416/05 decided on 31.10.2006 held that for the very subject of disputed property, parties have approached the Revenue Court and in the proceeding before the Board of Revenue, an interim order directing the parties to maintain status-quo has been passed and

ultimate decision of Revenue Court would be binding on the parties and, therefore, no useful purpose will be served in allowing to continue parallel criminal proceedings and such proceeding under Section 145 and 146 of the Code have been quashed.

The judgments relied on by learned counsel for the non-petitioner No.2 are of no help to the non-petitioner as they turn on their own facts.

In Prakash Chand Sachdeva Vs. State and another (supra) Hon'ble Supreme Court held that the proceedings under Section 145 could not also be dropped on ground of pendeny of civil suit. When there was no dispute about title, the rule that a suit or remedy in civil Court for possession or injunction normally prevents a person from invoking jurisdiction of the criminal Court would not apply. When claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition one cannot be permitted to act forcibly and unlawfully and ask the other to act in accordance with law. Where the dispute is not on the right to possession but on the question of possession the Magistrate is empowered to take cognizance under S. 145, Cr.P.C. Relying on this decision, this Court in Baliwala Vs. State of Rajasthan and another (supra) observed that the civil suit was mere suit for injunction which stood dismissed as withdrawn. It was neither regarding title of

property nor possession and accordingly it has been held by this Court that the Executive Magistrate has power to proceed under Ss. 145 and 146 Cr.P.C.

In the instant case, admittedly the non-petitioner No.2 came with a case that the petitioners and non-petitioner No.2 are in cultivatory possession of their respective shares and therefore, the possession of petitioners have been admitted to the extent of their share by the complainant non-petitioner No.2. It has also been admitted that the crops over the share of petitioners have been cultivated by petitioners and at best if there is a civil dispute that is with regard to the area of land for which a suit has already been filed by the non-petitioner No.2 and interim injunction has been granted restraining the present petitioners who were the non-petitioners therein, from interfering in the possession of the non-petitioner No.2 in 4/15th share of the land in Khasra No.62 measuring 50 bighas and 8 biswas and it was made clear in the order of injunction that the non-petitioner No.2 shall not be dispossessed from his share of land and parties to maintain the status-quo with regard to their respective possession. The order of injunction is prior to the initiation of the proceeding under Section 145 of the Code. Therefore, it is clear that the parties have resorted to Revenue Court for determining their right to possession and by an interim order, the Assistant Collector, Osian made arrangement by

directing the petitioners not to interfere with the possession of non-petitioner No.2 to the extent of his share as also directed the parties to remain in possession of their respective shares and maintain status-quo. In the circumstances, therefore, in my view, the Executive Magistrate fell in error in continuing the proceeding under Section 145 as also attaching the subject matter of the land in dispute under Section 146 (1) of the Code and allowing the parallel criminal proceeding is nothing but an abuse of the process of the Court. It is settled law that decision of the civil/ revenue court is binding on the criminal court in such matters between same parties and therefore, no useful purpose would be served in allowing to continue the parallel criminal proceeding as has been held by Hon'ble Supreme Court in Ram Sumer Puri Mahant Vs. State of U.P. (supra), Amresh Tiwari Vs. Lalta Prasad Dubey and Another (supra) and Mahar Jahan and Others Vs. State of Delhni and Others (supra).

In the result, the criminal misc. petition is allowed. The order of the Executive Magistrate dated 8.8.2006 as also the order of the revisional court dated 5.9.2006 are set aside. The proceeding under Section 145 and 146 of the Code in the Court of Sub-Divisional Magistrate, Osian in Criminal Case No. 01/06 is hereby quashed.

(H.R.PANWAR),J.

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